

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD BAKER,

Petitioner-Appellant,

v

STATE EMPLOYEES' RETIREMENT BOARD  
and DEPARTMENT OF MANAGEMENT AND  
BUDGET,

Respondents-Appellees.

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UNPUBLISHED

October 24, 2006

No. 267302

Marquette Circuit Court

LC No. 05-042267-AA

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Petitioner appeals by leave granted from a circuit court order affirming the State Employees' Retirement System Board's (Retirement Board) denial of his request for duty disability retirement under MCL 38.21. We reverse and remand.

Petitioner taught for the Department of Corrections from 1994 to 2001. In August 2001, petitioner went on a medical leave of absence for depression. In May 2002, petitioner filed a claim for duty disability retirement benefits claiming that he had suffered total disability as a result of work related depression. In October 2002, the Retirement Board determined that petitioner was entitled to non-duty disability benefits, but denied his request for duty disability benefits. Petitioner then requested an administrative hearing to review the denial.

In May 2004, an Administrative Law Judge (ALJ) held the requested hearing. In July 2004, the ALJ issued its proposal for decision (Proposal). After summarizing the evidence presented and making findings of fact, the ALJ concluded that petitioner was not entitled to duty disability benefits. The ALJ explained that,

... Petitioner's evidence of causation was controverted by the medical reports of both parties and the Administrative Record. There was no objective medical evidence introduced to support Petitioner's theory that his disability was duty-related. The doctors were not called to testify. The only evidence of causation introduced was Petitioner's testimony and explanations to doctors that he believed his depression was duty-related. Therefore, Petitioner has failed to sustain his burden of demonstrating that his disability was the natural and proximate result of the performance of his duty.

In sum, Petitioner has failed to meet his burden of proof under MCL 38.21 and is not entitled to duty disability benefits.

In October 2004, the Board adopted the findings of fact and conclusions of law stated in the ALJ's Proposal and, based on those findings and conclusions, denied petitioner's request for duty disability retirement benefits. Petitioner then appealed the Board's decision to the Marquette Circuit Court. On appeal to the circuit court, petitioner argued in part that the ALJ erred when she concluded that petitioner's medical records were legally insufficient to establish causation without independent fact checking or other objective evidence of causation.

In December 2005, the court entered its opinion and order affirming the Board's decision. The court determined that there was competent, material, and substantial evidence on the entire record to support the ALJ's conclusion that petitioner had not demonstrated a causal connection between his depression and the performance of his duties. The court did not directly address petitioner's argument that the ALJ erroneously concluded that petitioner's medical reports and testimony were, as a matter of law, insufficient to establish causation.

Petitioner then appealed to this Court by leave granted.

This Court reviews a lower court's review of an agency decision to determine whether (1) the lower court applied correct legal principles and (2) misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Jackson-Rabon v State Employees' Retirement System*, 266 Mich App 118, 119; 698 NW2d 157 (2005). The lower court's application of the substantial evidence test is reviewed for clear error. *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). "A finding is clearly erroneous when, 'on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made.'" *Dignan v Sch Emp Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002), quoting *Boyd*, *supra* at 235.

In the previous proceedings, the parties did not dispute that petitioner was totally and permanently incapacitated for duty. Hence, the only issue before the ALJ was whether petitioner's depression was "the natural and proximate result of the [petitioner's] performance of duty." MCL 38.21(1)(b). As already noted, the ALJ determined that petitioner had not met his burden of proof regarding causation and, for that reason, recommended that the Retirement Board deny petitioner's request for duty disability benefits. In coming to this conclusion, the ALJ noted that petitioner's claim that his depression was caused by petitioner's performance of his job duties was only supported by petitioner's own testimony and statements that he made to his treating doctors. The ALJ also noted that, although petitioner relied on statements made by the doctors in medical reports to prove causation, none of the doctors were actually called to testify. The ALJ found it noteworthy that the doctors conducted no independent fact checking. Finally, the ALJ concluded that there was no other objective evidence that petitioner's depression was caused by petitioner's performance of his duties.

These statements suggest that the ALJ was under the impression that petitioner's medical records could not, as a matter of law, be used as substantive evidence that petitioner's performance of his job duties was the proximate cause of his depression. However, once properly admitted, the medical reports could properly be used as substantive evidence of causation. See MRE 401; MRE 402. Therefore, if the ALJ accorded them no weight or lesser

weight based on an erroneous understanding of law, the ALJ's decision may have been "[a]ffected by other substantial and material error of law" that prejudiced substantial rights of the petitioner. MCL 24.306(1)(f). Likewise, the statements could also be interpreted to mean that the ALJ was operating on the assumption that the causation requirement stated under MCL 38.21(1)(b) may only be proved through "objective" evidence as opposed to petitioner's testimony and medical records based on petitioner's self-reported history. This assumption would also be error. See *Lombardi v Beaumont Hosp (On Remand)*, 199 Mich App 428, 435; 502 NW2d 736 (1993) (noting that lay testimony at an agency hearing may be used to establish issues of personal injury and causation). However, it is not entirely clear from the Proposal that the ALJ was operating under these erroneous assumptions. The statements within the Proposal could be construed as the ALJ's personal assessment of the weight and credibility of petitioner's testimony and the medical records. If the statements were merely the ALJ's assessment of the weight and credibility to be afforded this evidence, then the circuit court could properly defer to those assessments.<sup>1</sup> See *VanZandt v State Emp Retirement Sys*, 266 Mich App 579, 588; 701 NW2d 214 (2005) ("An agency's findings of fact are afforded deference, particularly with regard to witness credibility and evidentiary questions."). Because the primary review of an agency's decision is committed to the circuit courts, it was the circuit court's responsibility to determine whether the ALJ's statements indicated that the Proposal was affected by an error of law or merely represented the weighing of evidence and credibility. See MCL 600.631; *Boyd, supra* at 234.

Unfortunately, the circuit court did not directly address petitioner's claims of error in its December 2005 opinion and order. Hence, we are unable to conclude that the trial court deferred to the ALJ's assessment of the weight and credibility of the medical records or otherwise determined that any error of law was not substantial and material and, therefore, did not prejudice petitioner. See MCL 24.306(1). Because the circuit court would have been required to "hold unlawful and set aside" the decision of the Retirement Board if the Proposal was affected by a "substantial and material error of law", MCL 24.306(1)(f), in order to properly review the Retirement Board's factual determinations the trial court needed to fully address petitioner's claim that the Proposal was tainted by the ALJ's misunderstanding of the applicable law. Therefore, we must conclude that the trial court did not apply the correct legal principles to its review of the Retirement Board's decision. *Boyd, supra* at 234. Consequently, we reverse the decision of the circuit court, vacate its December 2005 opinion and order affirming the

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<sup>1</sup> At the August 2005 hearing, the trial court stated that it was having trouble with petitioner's argument that the ALJ imposed an improper standard. The Court noted, "[b]ut it seemed to me that she was saying, in her decision, that the objective—the medical opinions of duty-related disability had, as their only underpinning, statements of the plaintiff—of the petitioner, and that that was just insufficient to carry the burden."

Retirement Board's decision, and remand this case to the circuit court to again review the Retirement Board's decision in light of the considerations noted in this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski